

IN THE MATTER OF LICENSE NO. A-87643

Issued to: JOHN LOPES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1506

JOHN LOPES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 2 October 1964, an Examiner of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's motorboat operator's License for six months outright plus six months on twelve months' probation upon finding him guilty of misconduct. The two specifications found proved allege that while serving as Operator on board the motorboat HYANNIS under authority of the license above described, on 6 September 1964, Appellant wrongfully operated this vessel in Hyannis Harbor, Massachusetts, with more than six passengers on board, without a license authorizing such service; and, at this time, Appellant wrongfully operated the HYANNIS with twelve passengers on her upper deck in violation of the vessel's Certificate of Inspection which states that not more than nine may be on the upper deck.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of two witnesses, a portion of a chart, and a copy of the Certificate of Inspection issued to the HYANNIS.

Appellant testified in his own defense. He stated that he never had any reason to believe that his motorboat operator's license, which was renewed by the Coast Guard (in 1960) without any limitations as to the number of passengers specified on it, did not authorize him to continue to serve as an operator on motorboats carrying any number of passengers. Concerning the second specification, Appellant testified that he had posted a sign that not more nine persons were allowed on the upper deck at the same time, but he could not keep a constant check on the number of persons there, while operating the vessel in heavy traffic, because the controls were on the lower deck and forward of the ladder of the upper deck.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered the order of suspension mentioned above.

OPINION

The HYANNIS is a diesel-propelled motorboat of 15 gross tons and 39 feet in length. After inspection under 46 U. S. Code 390a (Act of 10 May 1956 which became effective on 1 June 1958) as a vessel which carries more than six passengers, the HYANNIS was issued a Certificate of Inspection on 18 June 1964 to expire in three years. This certificate specifies that the required crew shall consist of "1 Licensed Operator" and 1 Deckhand". The certificate also states that HYANNIS is permitted to carry a maximum of 49 passengers while operating in Hyannis Harbor but that "no more than 9 may be accommodated on the upper deck.

Appellant's License No. A-87643 was a renewal, in 1960, of a license obtained under the Motorboat Act of 1940. It contains no restriction or limitation as to the number of passengers Appellant is permitted to carry on a motorboat on which he is serving as operator. Prior to 1 June 1958, there was no regulation in effect which contained any such limitation as to this type of license. But effective 1 June 1958, 46 CFR 10.20-1 was changed to restrict the use of "Motorboat Operator License" to "carrying six or less passengers for hire."

Hence, after a Certificate of Inspection became necessary in order to carry more than six passengers subsequent to 1 June 1958, Appellant's license did not authorize him to serve as the "Licensed Operator" required on the motorboat HYANNIS even though he was a licensed Motorboat Operator and there was no stated limitation, as to the number of passengers, on Appellant's license which precluded him from serving as the Operator of the HYANNIS. In the absence of this restriction on the face of a Motorboat Operator's License, the situation is not perfectly clear due to the similarity of terminology used when referring to a "Licensed Operator" of a motorboat and a licensed Motorboat Operator.

Due to the above factors and also because there is no evidence to refute Appellant's testimony that he never had actual knowledge of the change in 46 CFR 10.20-1 on 4 June 1958, the conclusion that the first specification was proved is set aside and the specification is dismissed. in view of the nature of the transition in 1958, I do not think it would be fair to conclude that Appellant was bound by constructive knowledge of 46 CFR 10.20-1.

With respect to the second specification, the evidence shows that more than nine persons were on the upper deck in violation of the limitation in the Certificate of Inspection. It was Appellant's responsibility as the person in charge of the operation of the HYANNIS to strictly enforce this stability requirement. Although Appellant took some measures to prevent this violation, it is my opinion that he did not fully utilize all available means to ensure compliance with the certificate in this respect. The deck hand could have been given authority by Appellant to carry out definite orders that not more than nine persons were to be on the upper deck at one time.

The length of suspension will be reduced since one of the two specifications has been dismissed.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 2 October 1964, is modified to provide for a suspension of two (2) months outright.

As MODIFIED, the order is AFFIRMED.

W.D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 8th day of June 1965.

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